

## § 881.205

## 24 CFR Ch. VIII (4–1–00 Edition)

*Elderly Family.* As defined in parts 812 and 813 of this chapter.

*Family (eligible family).* As defined in part 812 of this chapter.

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*Gross rent.* As defined in part 813 of this chapter.

*Household type.* The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

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*Housing Assistance Payment.* The payment made by the PHA to the Owner of a unit as provided in the Contract. The payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. In the case of a Family renting only a manufactured home space, as provided in § 881.202(i), the Housing Assistance Payment is the difference between the Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space. A Housing Assistance Payment, known as a “vacancy payment”, may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the Contract.

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*Housing Assistance Plan.* A housing plan which is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR part 570.

*Housing type.* The three housing types are new construction, rehabilitation, and existing housing.

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*Low-Income Family.* As defined in part 813 of this chapter.

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*Tenant Rent.* The monthly amount defined in, and determined in accordance with part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with part 813 of this chapter.

*Utility allowance.* As defined in part 813 of this chapter, made or approved by HUD.

*Utility reimbursement.* As defined in part 813 of this chapter.

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*Very Low-income Family.* As defined in part 813 of this chapter.

### § 881.205 Limitation on distributions.

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see § 881.405), unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted

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distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.

(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.

### § 881.207 Property standards.

Projects must comply with:

(a) [Reserved]

(b) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(c) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(d) HUD requirements pertaining to noise abatement and control;

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, and R of this title; and

(f) Applicable State and local laws, codes, ordinances and regulations.

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an

alarm system connected to the smoke detector installed in the hallway.

[45 FR 7085, Jan. 31, 1980, as amended at 52 FR 1893, Jan. 15, 1987; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 64 FR 50227, Sept. 15, 1999, § 881.207 was amended by revising paragraph (e), effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

### § 881.207 Property standards.

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(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), 24 CFR part 35 and 24 CFR part 200, subpart O; and

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### § 881.208 Financing.

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including:

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(2) Mortgage insurance programs under the National Housing Act; and

(3) Financing by tax-exempt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:

(1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.

(2) Issuers of obligations that are tax-exempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.